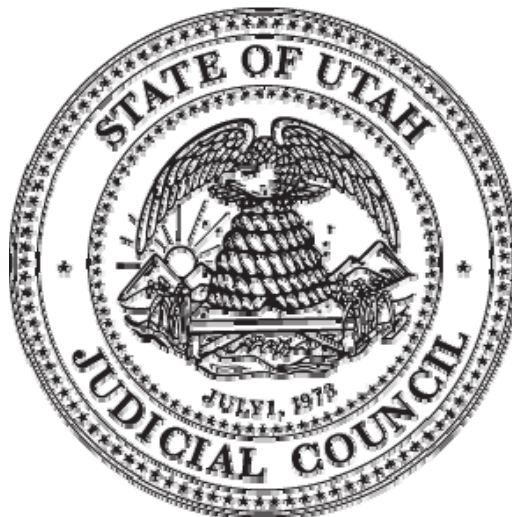




2010

STATE OF THE JUDICIARY

ADDRESS



Honorable Christine M. Durham
Chief Justice, Utah Supreme Court
January 25, 2010

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President Waddoups, Speaker Clark, and colleagues from the legislative branch of state government, let me begin by expressing my sincere appreciation for the invitation to address you on the state of Utah's judicial branch. I am pleased to be joined here today by my colleagues from the Supreme Court and from the Utah Judicial Council, the constitutional governing body for the judiciary.

As I have prepared to speak to you today, I have struggled to find language that would accurately describe the "state of the judiciary" - the condition in which we find ourselves at the beginning of 2010. The single word that seems most apt to me is "challenged." Like stress, challenge is very much a part of life. Social science research tells us that stress is, in and of itself, neither necessarily positive or negative; it can threaten well-being and normal functioning when it is overwhelming, but it is also responsible for motivating change and growth. Challenge works the same way for institutions. Significant challenge can put important things at risk, but it can also be a predicate for re-examining and re-evaluating priorities and established ways of doing things. In reporting to you this year on the state of the judiciary, then, I would like to acquaint you with the nature of our challenges and the steps we have taken and are taking to deal with them.

Because of our constitutional role in government, our basic priorities do not change. We must protect access to justice and fairness in the courts while dealing with budget realities. Last year I quoted a colleague who described state courts as "the emergency room for society." As the impact of the recession is felt at every level, it is important to remember the human dimensions of access and fairness. Decreases in court services necessitated by shortfalls must inevitably increase backlogs in civil, criminal, juvenile and family cases. The resulting delays may threaten the basic constitutional

rights of criminal defendants and civil litigants. They may prevent or delay the necessary adjustments of commercial interests, keep persons abused by domestic partners from prompt court protection, prevent disabled elderly people from receiving state-related benefits, result in delays in the protection of abused and neglected children, and hinder the timely disposition of criminal charges.

At the same time, there are a myriad of ways in which the courts can increase efficiency and effectiveness in times of challenge. Necessity, they say, is the mother of invention, and I am extremely proud of the way in which Utah's Judicial Council had stepped up to the challenge of re-thinking and re-engineering our work. If you will permit, I would like to share several success stories.

One example illustrates the way in which ideas born of necessity can result in better ways of doing things. During 2009 we moved to nearly exclusive reliance in our trial courts on digital recording for preservation of the court record. The immediate motivation lay in the significant cost savings that we achieved, which helped us deal with the cuts we were asked to take in our ongoing budget last year, and we were quite comfortable with the technology we had been phasing in over several years. We planned carefully for the transition, and as of July 1st we shifted entirely to an electronic method of preserving the record in court. Now, six months later, we are extremely gratified to report that these changes not only saved money but also resulted in greatly reduced transcript preparation times.

Whereas the average time to prepare a trial transcript before the shift was 138 days, it now averages 16. This means that parties who used to wait almost five months for a written transcript of their court proceeding now have it in hand in just over two weeks. Litigants and the courts are much better served by this new process - one that grew out of budget necessity.

On another front, we have also accelerated our electronic access plans, moving as quickly as we can to implement statewide e-filing and electronic payment of fees and fines, all of which decreases the volume of work for our clerical staff. A little over a year ago, we also undertook a very significant restructuring of our entire clerical workforce, realigning responsibilities and moving to a team-based approach with significant cross-training. Again, we have seen more efficiency and better service as a result. This is particularly notable because our clerical staff is significantly smaller than it was 18 months ago, while our case filings have increased dramatically. Parenthetically, I also note that, consistent with our “e-everything” approach, this State of the Judiciary address, traditionally printed and distributed to you, is instead available on our website: www.utcourts.gov.

Our emphasis on electronic solutions to create both cost savings and better public service is attracting national attention. The National Center for State Courts just completed a series of studies of current best practices in electronic court innovation. Let me just read the titles of the four studies: “Study of Electronic Payments in Missouri, Colorado, Utah and Iowa;” “Study of E-Filing in Colorado and Utah;” “Study of E-Citations in Missouri, Iowa and Utah;” and “Study of E-Juror in Iowa and Utah.” Not only are we on the cutting edge in the use these technologies, but also, unlike the other states in these studies, the Utah courts have in every instance developed and implemented them entirely in-house with existing resources.

Another area in which innovation has permitted better service is support for self-represented litigants, whose needs always increase in difficult economic times. Two years ago, we began a pilot program with a dedicated telephone help-line in two of our judicial districts. These lines are staffed by an able attorney who provides specific and practical procedural assistance to civil litigants navigating the

complexity of the legal system. The users of this service have given it rave reviews and, by identifying grant funding, we have been able this year to expand it to two additional rural districts, so that geographically more than half the state now has access. It may be a reflection of the huge impact of these difficult financial times that more than 2,000 people have used this service in the last year.

One of the areas in which self-represented litigants using the help-lines frequently ask questions involves probate matters. A comprehensive study undertaken by the Judicial Council a year ago underscored the need for changes in the way guardianships and conservatorships are managed in the courts. Protection of the legal rights of people with disabilities, including the elderly, is a core responsibility of any humane government, and the Council brought together members of the bar, the provider community, and social services to look for ways to protect this at-risk population. The proposals resulting from that work will be brought before you during this session. Because some of the changes may require new resources, we understand that you might not be able to address them all this year, but we hope and expect that our work has resulted in a plan for protecting these most vulnerable citizens that can be implemented, perhaps over time.

As my comments about the potential need to postpone important reforms suggest, we do clearly understand the scarcity of public resources at this time. Therefore, like other entities in state government, we have tried to be responsible in seeking budget savings. To that end, we instituted first an employee hiring slowdown and then a complete freeze. At the same time, after consultation with the Governor, as the appointing authority, and with the President of the Senate, which body confirms judicial appointments, we delayed the filling of all judicial vacancies in 2009. These actions generated budget savings, but they also, of course, increased the workload of our existing judges and employees.

I would like to note in particular how much I appreciate the willingness of our judges to step up to cover the increased workload created by those nine extended vacancies. I also want to be clear in saying - we need more judges. Our objective measures, including our judicial weighted caseload data tells us that, and that conclusion is confirmed by our hard working judges and staff every day.

We also realize that you are currently unable to respond to this need - and many others - in the current economic climate, so we are bringing you no new resource requests this session. Instead, we have looked for ways to use existing resources, including judges, more effectively. Several years ago, after Salt Lake City established its own Justice Court, removing tens of thousands of cases from the state docket, we recommended and you decided to move two judicial positions from the District Court in Salt Lake, which had then become over-staffed, to two districts elsewhere in the state, one juvenile and one district, where the need was greater. We now have a similar situation in the Second District (Weber, Davis and Morgan counties), where the creation of the Ogden Justice Court three years ago has resulted in a significant shift of cases out of the Second District Court, leaving its fourteen judges with only thirteen judges' worth of work.

During this same period of time, we have also been struggling with a significant understaffing problem in the Fifth District Juvenile Court (covering Washington, Iron and Beaver counties), where only two judges have been managing a burgeoning caseload resulting from dramatic population growth. While the Council has known for several years that a new judge in that district was a priority, we have been unable to address it - first, because the former courthouse in St. George would not accommodate a third judge and then, after the recession hit, because funding was simply not available. Now, with the forthcoming retirement of Second District Judge Jon Memmott in May, the Council has seen an

opportunity to equalize the caseload burden in both districts by asking you to consider moving a judgeship from an overstaffed part of the state to an understaffed one. The decision to make this request to you has not been an easy one for the Council, but we see it as our responsibility to identify for you a way to put scarce judicial resources to the most effective use. Realistically, we do not anticipate that you will be able to provide us with the new judges we need for some time yet, and therefore placing our existing judicial positions where they are most needed was, in the end, a compelling argument for the Council. You of course will decide the policy questions that may attend such a shift.

I have highlighted some of the work the judicial branch is doing to fulfill our obligations to use strained public resources wisely and effectively. As I am sure you know, nearly every state in the country has been dealing with economic challenges, and Utah often receives positive attention for our good management. The judicial branch is no exception, and we have been asked on numerous occasions over the past years to consult with other state judiciaries on the work we have been doing to re-structure and re-engineer the work of our courts; I am proud not only of the sacrifice and commitment of our staff and our judges, but also of the recognition of our effectiveness by our peers around the country. We are, in the face of serious challenges, doing good work.

Continuing in the spirit of reporting on our challenged condition, I want to assure you that the Judicial Council has already begun planning for anticipated additional cuts in this fiscal year. It would be misleading to suggest that there's any "low hanging fruit" left; we have already eliminated 65 positions, which represents 6 percent of our workforce, implemented another hiring freeze, undertaken significant re-organization of our clerical staff, accelerated technology solutions, and delayed filling judicial vacancies, as described earlier. At a three percent of COLA reduction level, we believe that

we can avoid further personnel actions this year. At a level above that, we will not be able to absorb the loss except through furloughs, and the Judicial Council and our presiding judges throughout the state are currently assessing how those could be accomplished in an orderly fashion. Given the personnel-dependent nature of our work, and given that our case filings remain 15 percent higher than their 2008 levels, there is no question that further personnel actions would have an impact on delay and case backlogs, and consequently on people's lives and on the commercial sector.

I have focused so far on the immediate challenges in the courts. I think I would be remiss in not sounding some larger themes within the context of challenges to access to justice. The Judicial Council has undertaken over the last year and a half an extensive exploration of the adequacy of appellate representation in criminal cases in our state. That work has been undertaken by a broad-based task force with representation from the legislature, state and local government, the bar, law enforcement and the judiciary, which will be producing analysis and recommendations for reform in the coming year. At the same time, we are increasingly aware of systemic problems affecting indigent criminal defense at all levels, access to civil justice by the poor, and adequate interpreter services to provide language access to the courts. A number of recent studies have examined these questions on a national and state-by-state level, and it is clear that we in Utah will need to address them sooner rather than later. We hope to be responsible and pro-active in efforts to ensure that our citizens can trust and rely on their courts for civil and criminal justice under the rule of law.

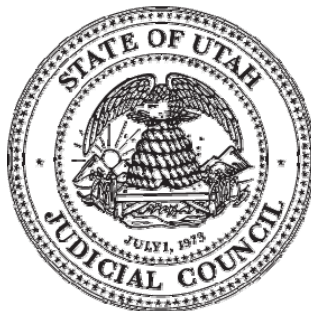
As I conclude these remarks, I express to you my regret that for the second time in my tenure as chief justice I have had to focus relatively more on budget-related actions than on discussion of the innovations we have made and the services we provide every day to Utah citizens. In particular I

would like to have dwelt more on describing the sacrifices and dedication of our hardworking court staff in every courthouse throughout this state. But these are extraordinarily difficult times, and I believed it imperative to share with you the steps we are taking to make it through them. I remain confident, however, that we will emerge from the challenges (soon, I hope) with a better, more streamlined, more efficient and more effective judicial system.

We in the judiciary understand that the economic challenges we face are being felt across all of state government; we acknowledge the daunting nature of your task in this session, and we stand prepared to do our part. We also, like you, are obligated to fulfill our constitutional role - to ensure access to justice - and we hope that you will be able to support us in that obligation. We greatly appreciated the collaborative problem-solving process we experienced in last year's legislative session, and look forward to continuing the work in the next few months.

Let me leave you with the favorite farewell of my husband's grandfather from Parowan. His life, like many of his generation, included many difficult times and some heart-breaking challenges. He never failed, however, as you left his presence, to enjoin you to "Keep on keeping on." Good advice for all of us.

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